

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

MOUAID HOMSI,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:20-1724
	:	
v.	:	(JUDGE MANNION)
	:	
HOME DEPOT USA, INC.,	:	
	:	
Defendant	:	

ORDER

Pending before the court is the report of Magistrate Judge Joseph F. Saporito, Jr., which recommends that the defendant's motion to dismiss the instant action be granted. (Doc. 14). Based upon a review of the record, the report and recommendation will be **ADOPTED IN ITS ENTIRETY**.

The plaintiff filed this *pro se* action on September 23, 2020. (Doc. 1). On December 2, 2020, the defendant filed a motion to dismiss the plaintiff's complaint (Doc. 8) along with a brief in support thereof (Doc. 9). After having been directed to do so (Doc. 12) the plaintiff filed a brief in opposition to the motion to dismiss (Doc. 13). On May 26, 2021, Judge Saporito issued the instant report, in which he recommends the defendant's motion to dismiss be granted, the plaintiff's complaint be dismissed without prejudice and the

instant action be closed. (Doc. 14). No objections have been filed to the report.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed.R.Civ.P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

The defendant’s motion to dismiss is based on the plaintiff’s failure to set forth the basis of the court’s jurisdiction. As indicated by Judge Saporito, “[t]he party asserting jurisdiction bears the burden of showing that at all stages of the litigation the case is properly before the federal court.” *Samuel-Bassett v. KIA Motors Am., Inc.*, 357F.3d 392, 396 (3d Cir. 2004).

Here, as discussed by Judge Saporito, the plaintiff has alleged no federal cause of action. Moreover, Judge Saporito indicated that, while the

parties appear to be citizens of different states, the plaintiff has not alleged an amount in controversy exceeding \$75,000, so as to satisfy the requirements of diversity jurisdiction. See 28 U.S.C. §1332(a)(1). Judge Saporito therefore recommends dismissal of the complaint without prejudice. The court finds no clear error of record as to the report and recommendation. Moreover, the court agrees with the sound reasoning relied upon by Judge Saporito in coming to his conclusion. As such, the court will adopt the report and recommendation of Judge Saporito in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The report and recommendation of Judge Saporito (Doc. 14) is ADOPTED IN ITS ENTIRETY.**
- (2) The defendant's motion to dismiss (Doc. 8) is GRANTED.**
- (3) The plaintiff's complaint (Doc. 1) is DISMISSED WITHOUT PREJUDICE.**
- (4) The Clerk of Court is directed to CLOSE THIS CASE.**

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: June 15, 2021

20-1724-01